

request, in writing, that the chief operating officer or other appropriate person of the former employing railroad provide a copy of that railroad's available information concerning his or her service record to the railroad that is considering such certification or recertification.

§ 240.115 Criteria for consideration of prior safety conduct as a motor vehicle operator.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) When evaluating a person's motor vehicle driving record, a railroad shall not consider information concerning motor vehicle driving incidents that occurred more than 36 months before the month in which the railroad is making its certification decision and shall only consider information concerning the following types of motor vehicle incidents:

(1) A conviction for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle drivers license for, operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance;

(2) A conviction for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, refusal to undergo such testing as is required by State law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance.

(c) If such an incident is identified,

(1) The railroad shall provide the data to the railroad's EAP Counselor, together with any information concerning the person's railroad service record, and shall refer the person for evaluation to determine if the person has an active substance abuse disorder;

(2) The person shall cooperate in the evaluation and shall provide any requested records of prior counseling or treatment for review exclusively by the EAP Counselor in the context of such evaluation; and

(3) If the person is evaluated as not currently affected by an active substance abuse disorder, the subject data shall not be considered further with respect to certification. However, the

railroad shall, on recommendation of the EAP Counselor, condition certification upon participation in any needed aftercare and/or follow-up testing for alcohol or drugs deemed necessary by the EAP Counselor consistent with the technical standards specified in § 240.119(d)(3) of this part.

(4) If the person is evaluated as currently affected by an active substance abuse disorder, the person shall not be currently certified and the provisions of § 240.119(b) will apply.

§ 240.117 Criteria for consideration of operating rules compliance data.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) A person who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains shall not be currently certified as a locomotive engineer.

(c) A certified engineer who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains shall have certification revoked.

(d) *Limitations on consideration of prior operating rule compliance data.* Except as provided for in paragraph (i) of this section, in determining whether a person may be or remain certified as a locomotive engineer, a railroad shall consider as operating rule compliance data only conduct described in paragraph (e) of this section that occurred within a period of 60 consecutive months prior to the determination. A review of an existing certification shall be initiated promptly upon the occurrence and documentation of any conduct described in this paragraph.

(e) A railroad shall consider violations of its operating rules and practices that involve:

(1) Failure to control a locomotive or train in accordance with a signal indication that requires a complete stop before passing it;

(2) Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 miles per hour or by